IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1492 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITKUMAR TRIKAMBHAI PATEL - Petitioner(s)
Versus
DDO & 1 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MS NAYANA V PANCHAL for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/01/2007

ORAL JUDGMENT

1. Leave to correct the date in the prayer clause as “15.7.1996 (Annexure “B”)”, and Mr.Joshi, learned Counsel for the petitioner, declares

that there is no challenge to the communication/sanction order dated 17.10.1995 (Annexure “A”).

2. The only question arises for consideration is whether the respondent authorities can refuse to make the payment, on the ground that in the subsequent year as the rate quoted was of lesser amount or not ?

3. The short facts of the case are that the petitioner had supplied registers to the respondent having size of 7.5” x 12.5”. For such purpose, the bills were also submitted by the petitioner at the rate of Rs.180/-. It is not in dispute that the bills were also sanctioned. However, before the amount was actually disbursed, a communication dated 15.7.1996 was addressed by the Additional District Health Officer to the petitioner intimating that in the present year the rate of 7.5” x 12.5” register of 50 pages was sanctioned of Rs.150/- and, therefore, for the previous year, it should be of Rs.130/- to Rs.140/- and, therefore, the petitioner was called upon to

submit the revised bills at the rate of Rs.130/- and it was further stated that the matter will be considered for payment thereafter. It is under these circumstances, the petitioner has approached this Court by the present petition.

4. I have heard Mr.Joshi, learned Counsel for the petitioner and Ms.Panchal, learned Counsel for the respondent authorities.

5. It appears that there is no dispute on the aspects of size of registers of 7.5” x 12.5” size, nor is there any dispute on the aspect that the registers were not supplied. It is also not in dispute that the bills were sanctioned. The perusal of the document at Annexure “I” shows that the circular dated 6.6.1995, inter alia, provided for the rate of Rs.180/- for the registers having size of 7.5” x 12.5”. Therefore, the only ground, on which the payment denied was that for the year of 1996 the rate sanctioned was of Rs.150/- and, therefore, for the previous year, it should be less. In contractual matters, where the rates are prescribed and the delivery was made, the same

was accepted and the bills were sanctioned the payment cannot be withheld on probabilities. It may be that the officer might have acted in bona fide, but such a ground for withholding of the payment cannot be considered as a valid ground in the eye of law while discharging the contractual obligation by a statutory authority, which is a State within the meaning of Article 12 of the Constitution of India. It is by now well settled that the authority, which can be said as a State within the meaning of Article 12 of the Constitution of India is required to act in the just, fair and reasonable manner, even while discharging the contractual obligation. If such tests are applied, the ground which is mentioned in the impugned order cannot be sustained in the eye of law and it can only be said that such was on hypothesis having no sanction of law for such purpose while discharging contractual obligations.

6. In the result, the ground mentioned and the impugned order passed on the basis of the same cannot be sustained in the eye of law and it

deserves to be concluded that the authorities were not justified in withholding the payment on the ground that for the subsequent order as the rates quoted were less, the price prevailing for the previous year would be less than the same, though it may not have been agreed while entering into contract.

7. In the result, the impugned order dated 15.7.1996 Annexure “B” is quashed and set aside. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

11.1.2007 **(Jayant Patel, J.)**

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